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March 28, 2011

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Ms. Mary Lee Phelps, Interim Acting Director  
Department of Special Education Operations  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXX  
Reference: #11-056

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On January 28, 2011 and February 7, 2011, MSDE received correspondence from Mr. XXXXXXXXX, hereafter, "the complainant," on behalf of his daughter. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. MCPS did not ensure that necessary action was taken to assist the student's mother, whose native language is other than English and who expressed difficulty understanding the discussion, with understanding the proceedings of Individualized Education Program (IEP) team meetings, since the start of the 2010-2011 school year, in accordance with 34 CFR §300.322.
2. MCPS has not ensured that the student's need for speech/language therapy, counseling services, and transportation services have been identified and addressed since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.101, .320, .323, and .324.

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3. MCPS did not ensure that proper procedures were followed when determining the student's educational placement for the 2010-2011 school year, in accordance with 34 CFR §§300.114 - .116.
4. MCPS has not ensured that proper written notice of IEP team decisions have been provided since the start of the 2010-2011 school year, in accordance with 34 CFR §300.503.
5. MCPS has not ensured that a report of the student's progress toward achieving the annual IEP goals was provided for the first (1<sup>st</sup>) quarter of the 2010-2011 school year, in accordance with 34 CFR §§300.101, .320, .323, and .324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, was assigned to investigate the complaint.
2. On February 1, 2011, MSDE sent a copy of the correspondence received on January 28, 2011, via facsimile, to Ms. Mary Lee Phelps, Interim Acting Director, Department of Special Education Operations; Ms. Gwendolyn Mason, Director, Department of Special Education Services, MCPS; and Ms. Alison Steinfelds, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On February 1, 2011, Ms. Mandis conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On February 3, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to the investigation. On the same date, MSDE notified Ms. Phelps of the allegations and requested that her office review the alleged violations.
5. On February 7, 2011, Ms. Mandis conducted another telephone interview with the complainant in order to discuss the allegations to be investigated. Following that telephone conversation, the complainant provided MSDE with correspondence containing additional allegations of violations of IDEA.
6. On February 8, 2011, MSDE sent a copy of the correspondence received on February 7, 2011, via facsimile, to Ms. Phelps, Ms. Mason, and Ms. Steinfelds.
7. On February 9, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the February 8, 2011 correspondence and identified the additional allegations

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to be investigated. On the same date, MSDE notified MCPS of the additional allegations and requested that the school system review the alleged violations.

8. On March 9, 2011, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, reviewed the student's education record at XXXXXXXXXXXXXXXX School (XXXXXXXXXX) and interviewed the following school staff:

- a. Ms. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXX (XXXXXXX);
- b. Ms. XXXXXXXX, School Counselor, XXXXXXXXXXXX;
- c. Ms. XXXXXXX, Special Education Teacher, XXXXXXXXXXX;
- d. Mr. XXXXXX, Special Education Supervisor, XXXXXXXX;
- e. Ms. Michelle Palmer, School Psychologist, MCPS;
- f. Ms. Susan Schindler, Speech Pathologist, MCPS;
- g. Ms. XXXXXXXXX, Learning Center Coordinator, XXXXXXX; and
- h. Ms. XXXXXXXX, Principal, XXXXXXXX.

Ms. Steinfelds; Ms. Amy Shvodian, Paralegal, Equity Assurance and Compliance Office, MCPS; and Ms. Patty Grundy, Paralegal, Equity Assurance and Compliance Office, MCPS, were present at the record review, as representatives of MCPS, in order to provide information on MCPS policies and procedures, as needed.

9. On March 16, 2011, Ms. Mandis conducted a telephone interview with the complainant to discuss the allegations in the complaint and the documents in the student's education record.

10. On March 22, 2011, MCPS provided MSDE with a written response to the complaint.

11. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:

- a. IEP from XXXXXXXXX (XXX IEP), dated March 16, 2010, and facsimile cover sheet from XXXXXXX to MCPS;
- b. Electronic mail (E-mail) messages between the complainant and school staff, dated August 22 – 24, 2010;
- c. MCPS enrollment report for the student;
- d. Reports of the student's progress from the classroom teacher in XXXXXXX, dated June 5, 2010 and January 7, 2010
- e. Reports of the student's progress from the counseling service provider in XXXXXXX, dated January 18, 2010 and June 2, 2010;
- f. Reports of the student's progress from the speech/language service provider in XXXXXXX, dated January 29, 2010 and September 23, 2010;
- g. Report of an independent psychoeducational assessment obtained by the complainant, which was completed on September 20, 2010;

- h. Parent Report form, dated October 5, 2010;
- i. IEP, dated October 7, 2010 and written invitation to the complainant to the IEP team meeting;
- j. Authorization for Release of Confidential Information, dated October 21, 2010;
- k. E-mail from the complainant to school staff, dated November 11 and 18, 2010;
- l. E-mail message from school staff to the complainant, dated November 18, 2010;
- m. Written summary of the November 29, 2010 IEP team meeting;
- n. E-mail messages between the complainant and school staff, dated December 1, 2010;
- o. Correspondence from the complainant alleging violations of IDEA, received by MSDE on January 28, 2011;
- p. Written summary of the February 18, 2011 IEP team meeting and written invitation to the complainant to the IEP team meeting; and
- q. MCPS 2010-2011 school year calendar.

**BACKGROUND:**

The student is ten (10) years old, is identified as a student with a speech/language impairment under IDEA, and receives special education and related services. The complainant enrolled the student at XXXXXX on October 7, 2010 after the family relocated to Montgomery County from the XXXXXX. The student has attended XXXXXXXXXXXX since October 28, 2010 as a result of a placement decision made by the IEP team (Docs. a – c and i).

**ALLEGATION #1: PARENT PARTICIPATION IN IEP TEAM MEETINGS**

**FINDINGS OF FACT:**

1. On August 22, 2010, the complainant contacted MCPS to inform the school system that the family would be relocating to Montgomery County from the XXXXXXXXXXXX. MCPS staff informed the complainant that the student could be enrolled in the school system as soon as the complainant established residency in Montgomery County (Doc. b).
2. Before moving to the State of Maryland, the student attended XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school, where she was placed by the XXXXXX XXXX Board of Education. On September 2, 2010, XXXXXXXXXXXXXXXXXXXX staff provided XXXXXX staff with a copy of the student's IEP (XX IEP) and evaluative data (Doc. a).
3. On October 4, 2010, the complainant enrolled the student at XXXXXX, the school she would attend if not disabled (Doc. c).

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4. Because XXXXXX staff did not believe the school has an appropriate program for the student, an expedited IEP team meeting was held on October 7, 2010. The written invitation to the complainant to attend the meeting states that the purpose of the meeting was to determine the student's eligibility and current levels of performance, and to revise the XXX IEP, if needed (Docs. i and o).
5. Documentation of the October 7, 2010 IEP team meeting indicates that the IEP team determined the student's eligibility under IDEA and revised the XXX IEP. The complainant was provided with notice of the procedural safeguards during the meeting (Docs. i, o, and interviews with the complainant and school staff).
6. On November 11, 2010, the complainant informed school staff that the student's mother, whose native language is Japanese, had difficulty following the discussion during the IEP team meeting held on October 7, 2010 (Doc. k).
7. On November 18, 2010, school staff responded to the complainant, indicating that they were not aware of the need for the interpreter prior to the October 7, 2010 meeting and pointing out the March 16, 2010 XXX IEP states that the preferred language of the complainant and the student's mother is "English" and that an interpreter is not required. School staff assured the complainant that a XXXX interpreter would be provided at the future meetings in response to his request (Docs. a and l).
8. The services of a XXXXXX interpreter have been provided to the student's mother at subsequent IEP team meetings held on November 29, 2010 and February 18, 2011 (Docs. m and p).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation**

In this case, the complainant alleges that if he had been provided with a copy of the procedural safeguards prior to the October 7, 2010 meeting, he would have requested an interpreter for the student's mother for the meeting (Doc. o).

### **Legal Requirements**

#### *Parent Participation in IEP Team Meetings*

Each public agency must take steps to ensure that one or both of the parents of a student are present at each IEP team meeting or are afforded the opportunity to participate. To ensure meaningful participation, the public agency must take whatever action is necessary to ensure that

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the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English (34 CFR §300.322).

#### *Provision of Notice of the Procedural Safeguards*

A copy of the procedural safeguards must be given to the parents at least once each school year. Additionally a copy must be provided to the parents upon initial referral or parent request for evaluation, upon receipt of the first (1<sup>st</sup>) State and due process complaint filed in a school year, and upon request by the parent (34 CFR §300.504).

#### *Transfer Students*

If an evaluation is determined necessary for a student who transfers to a public agency in another state, it would be considered an initial evaluation and not a reevaluation, which would require parental consent (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

#### **Conclusions**

Based on Findings of Fact #1 - 5, MSDE finds that because a purpose of the October 7, 2010 IEP team meeting was to determine eligibility under IDEA, this was considered an initial evaluation. Because IDEA requires that procedural safeguards be given to parents at the time of referral for initial evaluation, MCPS was required to provide the parents with the procedural safeguards when the decision was made to conduct the initial evaluation.

Since the decision was made by school staff to conduct an initial evaluation prior to the October 7, 2010 IEP team meeting, the parents should have been provided with notice of the procedural safeguards prior to the October 7, 2010 meeting. Based on Finding of Fact #5, MSDE finds that notice of the procedural safeguards was not provided to the parents prior to the October 7, 2010 meeting. Therefore, this office finds that a violation occurred with regard to this allegation.

Notwithstanding the violation, based on Finding of Fact #7, MSDE finds that there is documentation that the right to request an interpreter was addressed with the complainant in XXXXXX within a year of the October 7, 2010 meeting. Additionally, based on Findings of Fact #6 - 8, this office finds that MCPS has made an interpreter available to the student's mother at subsequent meetings after having received the complainant's request for an interpreter. Therefore, MSDE finds that the violation did not impact the ability of the student's parents to participate in IEP team meetings, and no student-specific corrective action is required to redress the violation.

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**ALLEGATIONS #2, #3, AND #4 IEP THAT ADDRESSES THE STUDENT'S NEED FOR SPEECH/LANGUAGE THERAPY, COUNSELING, AND TRANSPORTATION SERVICES; EDUCATIONAL PLACEMENT DECISION; AND PROPER WRITTEN NOTICE OF IEP TEAM DECISIONS**

**FINDINGS OF FACT:**

**October 7, 2010 IEP Team Meeting**

9. At the October 7, 2010 IEP team meeting, the team, which included the student's mother and father, considered the following data:
  - a. The XXX IEP, which states that the student has "significant deficits in academics, social development and language," and that she is provided with the following to assist her in achieving goals to address needs in reading, written language, math, expressive and receptive language, social skills, and peer interaction:
    - i. Special education instruction in a "small, highly structured educational setting that can provide the continuous academic, social and emotional support needed;"
    - ii. Speech/language therapy, both individually and with another student with similar needs outside of the classroom;
    - iii. Counseling services, both individually and with another student with similar needs outside of the classroom;
    - iv. Transportation; and
    - v. Accommodations of extended time, small group instruction, repetition of directions, use of a calculator, and verbatim reading of tests.
  - b. Reports of the student's progress from her classroom teacher and service providers in XXXX, which indicate the following:
    - i. The student is performing at the first (1<sup>st</sup>) grade level in reading and at the end of the first (1<sup>st</sup>) grade level in math;
    - ii. The student more consistently asks adults for help when she is feeling anxious, and that with assistance from a teacher or therapist, she is able to implement a calming strategy to cope with her feelings;

- iii. The student has increased her ability to sustain reciprocal conversations with peers in counseling and “is beginning to generalize this skill to interactions in the classroom;”
  - iv. The student should be encouraged to “share her ideas and outside life with peers rather than only with adults;”
  - v. The student should be provided with “developmentally leveled, small group instruction” with frequent visual and hands-on learning experiences and one-to-one support from teachers to remain on task and to deal with noise, distractions, and high activity levels; and
  - vi. The student should continue to receive counseling and speech/language therapy individually and with another student with similar needs.
- c. Information from the complainant that he had obtained a comprehensive independent psycho-educational evaluation, that the evaluation report would be available that week, and that the report “should be used to inform a final version of the IEP.” The complainant stated that he wanted to be sure that the IEP was reviewed quickly upon receipt of the results of the independent psycho-educational evaluation. He explained that he felt that the student “would be overwhelmed in a large general education class in her home school,” and that he did not want the student to have to transition to a new placement if a change in placement was required as a result of information from the independent psycho-educational evaluation. The complainant reported that while pervasive developmental delay was the initial diagnosis, the student’s disability is a language impairment and that her “issues are too complex to adequately address on a short form” (Docs. d - i).
10. At the October 7, 2010 IEP team meeting, the team decided that, based on information from the student’s classroom teacher and service providers in XXXXXXXX, the student meets the criteria for identification as a student with a speech/language impairment. The team decided that present levels of performance and services could be determined based on that data as well, and that no additional data was needed. The IEP states that the team decided that when the parents provide the independent psycho-educational assessment, the results will be reviewed by a MCPS school psychologist, and that the team will review the IEP based on information from the assessment and the MCPS school psychologist (Doc. i).



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11. At the October 7, 2010 meeting, the team did the following:
  - a. revised the annual goals for the student to improve her reading, written language, and math skills, and developed goals for the student to improve language comprehension skills, pragmatic language skills, peer interaction and social skills;
  - b. decided that the student requires special education instruction, social skills instruction in the classroom by a school psychologist, and speech/language therapy in order to assist her in achieving the goals; and
  - c. decided that the student would be provided with accommodations in the classroom and on tests, including verbatim reading of tests, use of a scribe, visual and graphic organizers, calculation devices, extended time, frequent breaks, and reduced distractions.

The October 7, 2010 IEP states in one (1) section that the speech/language service will be provided in the general education classroom and in another section it states that it will be provided "outside of general education." The IEP also states that the student will be provided with the following supplementary aids and services by the "IEP Team:" repetition of directions, checks for understanding, use of pictures to support reading passages, simplified reading structure, vocabulary, and graphics on assignments and assessments, and prompts to ask for assistance. Documentation of the meeting states that the special education services will be provided from October 7, 2010 until October 6, 2011(Doc. i).

12. Documentation of the October 7, 2010 IEP team meeting states that the team considered whether the IEP can be implemented in the general education classroom or a combination of general and separate special education classrooms with the provision of supplementary aids and services. The documentation further reflects that the team decided that the least restrictive environment in which the IEP can be implemented is a separate special education classroom for all academic subjects, and that the IEP cannot be implemented in the general education classroom even with the provision of supplementary aids and services due to the student's need for a highly structured environment with a smaller staff/student ratio and individualized support. The IEP states that the team decided that removal of the student from the general education classroom would not have a potential harmful effect on the student or the quality of services she needs (Doc. i).
13. The October 7, 2010 IEP states that the team decided that the IEP cannot be implemented in the school the student would attend if not disabled because XXXXXX does not have a highly structured learning environment required by the student. The team also decided that although XXXXXXXX is not the closest school to the student's home, placement at that school is appropriate because it offers a highly structured reading program with individualized support and the services of a psychologist in the classroom. The team

further decided that the student would be provided with transportation as a related service (Doc. i).

14. Both school staff and the complainant report that at the October 7, 2010 meeting, the team determined that the student would receive instruction in Science and Social Studies in a small group setting within the general education classroom, and that this is the setting in which that instruction is being provided (Interviews with the complainant and school staff).
15. At the October 7, 2010 meeting, the student's father provided written consent for implementation of the IEP developed at the meeting (Doc. i)
16. Following the October 7, 2010 meeting, the complainant and his private educational consultants visited XXXXXXXX to conduct observations in order to determine whether the proposed placement was acceptable to the complainant. While the complainant ultimately disagreed with placement of the student at XXXXXXXXXX, he began sending her to the school on October 28, 2010 in order to ensure that she received services while he disputes the program and placement (Doc. j and interview with the complainant).
17. On November 11 and 18, 2010, the complainant expressed his concerns about the program and placement at XXXXXXXXXX with school staff and requested that the IEP team reconsider placement at the next IEP team meeting, which had been scheduled for November 29, 2010 (Doc. k).
18. On November 18, 2010, school staff responded to the complainant's request to add placement to the agenda for the November 29, 2010 IEP team meeting. MCPS staff provided the complainant with a written response, which states the following:

I understand your concerns and I [am] aware that a meeting has been scheduled at XXXXXXXX on Nov. 29<sup>th</sup>. The purpose of that meeting (re-val planning) is to share [the student's] progress and to receive permission to formally review the recent XXX evaluation that the school has received. In addition, after teacher reports, the IEP team will discuss any other data needed or concerns that you and [the student's mother] have. At that meeting I will explain programming and placement decisions/options with you (Doc. l).

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### **November 29, 2010 IEP Team Meeting**

19. At the November 29, 2010 meeting, which was convened at XXXXXXXXXXXX, the complainant expressed concern that the student was not receiving the amount and nature of services that she received in XXXXXX, his disagreement with the educational placement, and his belief that the student does not understand the material presented. The Special Education Supervisor noted that the student had only been attending XXXXXXXXXXXX for twenty-two (22) days (Doc. m).
20. The complainant and the student's XXXXXXXX psychologist, who participated in the November 29, 2010 meeting by telephone, expressed concern that the student was not receiving related services outside of the classroom to address her difficulty with communicating her needs. The complainant indicated that there was no data to indicate that the student ever before participated in the general education classroom, and therefore, no basis for the team's decision that the IEP can be implemented in that setting. School staff stated that the student would receive support from the school psychologist in the classroom, but the complainant indicated that he does not believe this would sufficiently address her needs (Doc. m).
21. Based on the complainant's concerns about the appropriateness of the program and placement, the team recommended on November 29, 2010 that social/emotional, educational and speech/language assessments be conducted. The complainant indicated that he wanted to obtain independent assessments, and provided written consent for the MCPS school psychologist to review the independent psycho-educational evaluation that he provided. The team also discussed the fact that while the XXXXXXXX psychologist had provided results of a psychological assessment that reports grade level equivalencies, they required additional information such as the standard scores from the evaluation. The student's XXXXXXXX psychologist agreed to provide that data (Doc. m).
22. At the November 29, 2010 meeting, the complainant indicated his understanding that the team previously decided that the IEP would be reviewed and revised as soon as he provided the report of the independent psycho-educational evaluation. School staff indicated that the team decided that there was sufficient information to determine the program and placement at the previous meeting, and that there was no new data to indicate program and placement is not appropriate (Doc. m).

### **February 18, 2011 IEP Team Meeting**

23. On February 18, 2011, the team reconvened at XXXXXXXXXXXX and began a review of the IEP based on the assessment data. However, due to time constraints, the team did not complete the review of the IEP and is scheduled to reconvene on March 28, 2011 (Doc. p).

**DISCUSSION/CONCLUSIONS:**

**Allegation #2                    IEP That Addresses the Student's Need for Speech/language Therapy, Counseling, and Transportation Services**

In this case, the complainant alleges that the IEP team revised the XXX IEP based on MCPS' service delivery system and not on the student's identified needs. Further, he alleges that MCPS was required to provide "comparable services" to that being provided in XXXXX, including:

- Speech and counseling individually and with another student with similar needs outside of the classroom; and
- Door-to-door transportation on a mini bus with an adult assistant and no more than ten (10) students with disabilities.

The complainant indicates that although the manner in which transportation was provided was not specified on the XXXX IEP, it is how all students with disabilities in XXXXXX are transported. The complainant further indicates that he believes the student requires this level of support because she is unable to advocate for her needs due to her significant speech/language impairment (Doc. o and interviews with the complainant).

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .103). If a student with an IEP in one state transfers to a public agency in another state, the new public agency (in consultation with the parents) must provide the student with a free appropriate public education (FAPE), including services comparable to those described in the student's IEP from the previous state, ***until the new public agency:***

- a. Conducts an evaluation<sup>1</sup> if determined to be necessary; and
- b. Develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

"Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, ***as determined by the IEP team in the new public agency*** [Emphasis added] (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

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<sup>1</sup> As stated above in the Discussion of Allegation #1, if an evaluation is determined necessary for a student who transfers to a public agency in another state, it would be considered an initial evaluation and not a reevaluation (Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

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Based on Findings of Fact #1, 3 – 5, and 11 - 16, MSDE finds that the IEP team conducted an initial evaluation and developed an IEP on October 7, 2010 prior to the student attending school in Maryland. Therefore, this office finds that because MCPS developed a new IEP, it was not required to provide comparable services to those provided in XXXXXXX.

However, MCPS was required to ensure that the IEP includes services that address the student's identified special education instruction and related service needs in order to ensure the provision of FAPE to the student. To appropriately identify the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom (34 CFR §§300.320 and .324).

Based on Findings of Fact #9 - 12, MSDE finds that the team considered assessment data, and information from the complainant and the student's teachers and service providers when developing the student's program. Based on those Findings of Fact, MSDE finds that while the team decided that social skills and speech/language needs would be addressed in the classroom instead of through individual therapy, as was provided in XXXXXXX, it developed a program with goals and services to address identified areas of need in speech/language, social/emotional functioning, and transportation. Therefore, MSDE does not find that a violation occurred with regard to the allegation.

This office understands that the complainant disagrees with the team's decisions about the amount and nature of special education services needed to assist the student in achieving the annual IEP goals. During the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must determine whether proper procedures were followed when making determinations about the program and whether there is data to support those decisions.

When it is determined that the public agency has not followed proper procedures, the state agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services. However, the state educational agency may not overturn an IEP team's decisions (United States Department of Education, Office of Special Education Programs, Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, MSDE did not identify a procedural violation with respect to the determination of special education services and may not overturn the team's decisions. However, the complainant is reminded that he maintains the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the special education services required by the student.

**Allegation #3**                      **Educational Placement**

To the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. In determining the least restrictive environment in which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 and .116).

Additionally, the educational placement must be as close as possible to the student's home. Unless the IEP requires another arrangement, the student must be educated in the school that the student would attend if nondisabled (34 CFR §300.116).

Based on Findings of Fact #12 and 13, MSDE finds that there is documentation that the team considered less restrictive environments in which the IEP can be implemented with the provision of supplementary aids and services, as well as any potential harmful effect on the student or the services she needs. However, based on Findings of Fact #12 and 14, MSDE finds that the team's decision to provide special education instruction in Social Studies and Science in the general education classroom is inconsistent with its determination that the IEP cannot be implemented in the general education classroom even with the provision of supplementary aids and services. Therefore, this office finds that a violation occurred with regard to this allegation.

**Allegation #4**                      **Prior Written Notice of the IEP Team's Decisions**

Written notice must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE. This notice includes a description of the action proposed or refused, the basis for the decision, other options considered, and the data used in making the decision (34 CFR §300.503).

It is important that the parent be provided with this written notice so that the parent can determine whether to exercise the right to utilize the dispute resolution procedures to resolve any disagreement with the team's decisions. It is also important for the IEP to be written in a manner that is clear with respect to the services to be provided in order to ensure that the student is provided with the special education services required (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999).<sup>2</sup>

In this case, the complainant alleges that the team decided that the October 7, 2010 IEP would be reviewed and revised as soon as he provided the report of the independent psycho-educational assessment, but that school staff refused to do so at the November 29, 2010 meeting and did not provide documentation of the basis for the refusal (Docs. n, o, and interviews with the

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<sup>2</sup> This requirement was not changed by the 2004 Reauthorization of IDEA.

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complainant). Based on Findings of Fact #10 - 15, MSDE finds that the documentation of the October 7, 2010 meeting indicates that the team decided that the IEP would be reviewed based on information from both the results of the independent psycho-educational evaluation and from the MCPS school psychologist's review of that data. MSDE further finds that, based on Findings of Fact #19 – 22, the MCPS school psychologist had not yet reviewed of the independent psycho-educational evaluation by the November 29, 2010 meeting. Therefore, the data that the team decided was needed prior to reviewing the IEP was not available by the date of the November 29, 2010 meeting.

Based on Findings of Fact #17 - 23, MSDE finds that documentation of the November 29, 2010 meeting indicates both the complainant's concerns and the basis for the decision not to review the student's educational placement at that meeting. Therefore, this office does not find that a violation occurred with respect to these aspects of the allegation.

However, based on Findings of Fact #12 - 14, MSDE finds that the school system did not properly document the team's decisions regarding the setting in which special education instruction in Social Studies and Science and speech/language therapy is to be provided. Additionally, based on Finding of Fact #11, MSDE finds that the IEP is not written in a manner that is clear with respect to the school staff responsible for providing the supplementary aids and services. Therefore, this office finds that a violation occurred with regard to the allegation.

The complainant is reminded that pursuant to IDEA and the Family Educational Rights and Privacy Act (FERPA), if he believes that IEP team documentation contained within the student's education record is inaccurate or misleading, he may request that the school system amend the information. If the school system refuses to amend the record, it must advise him of that decision and provide him with the opportunity to request a hearing to challenge the content of the student's education record (34 CFR §§300.567-.568 and 34 CFR §§99.20-.22).

#### **ADDITIONAL VIOLATION:**

The results of assessment procedures must be used by the IEP team in reviewing, and as appropriate, revising the student's IEP within ninety (90) days of the IEP team meeting in which the team determines that assessment data is required (COMAR 13A.05.01.06). Based on Findings of Fact #21 and 23, MSDE finds that MCPS has not ensured that the reevaluation begun on November 29, 2010 has been completed within the required timelines, and that a violation has occurred.

**ALLEGATION #5: PROVISION OF PROGRESS REPORTS FOR THE FIRST (1<sup>ST</sup>) QUARTER OF THE 2010-2011 SCHOOL YEAR**

**FINDINGS OF FACT:**

24. The IEP states that the student's parents will be provided with reports of the student's progress toward achievement of the annual IEP team goals on "a quarterly basis" (Doc. i).
25. The first (1<sup>st</sup>) quarter marking period for the student ended on October 29, 2010. The school system's enrollment data indicates that the student began attending school on October 28, 2010 (Docs. c and q).

**DISCUSSION/CONCLUSIONS:**

Each public agency must ensure that services are provided consistent with the IEP. This includes the provision of reports of the student's progress toward achievement of the annual IEP goals (34 CFR §§300.101, .323, and .324).

In this case, the complainant alleges that he was not provided with a report of the student's progress toward achievement of the annual IEP goals for the first (1<sup>st</sup>) quarter of the 2010-2011 school year until mid-way through the second (2<sup>nd</sup>) quarter of the year. When he received reports of the progress for the second (2<sup>nd</sup>) quarter, the first (1<sup>st</sup>) quarter reports were re-stated on some, but not all of the goals, along with the second (2<sup>nd</sup>) quarter reports. The complainant asserts that this made the second (2<sup>nd</sup>) quarter progress report difficult to understand (Doc. and interview with the complainant).

Based on Findings of Fact #16, 24, and 25, MSDE finds that because the student attended school for the last days of the first (1<sup>st</sup>) quarter of the year, and since the IEP does not indicate that progress would be achieved within that period of time, there would be no progress to report to the complainant at the end of that quarter. Thus, MSDE finds that MCPS was not required to provide the complainant with a progress report at the end of the first (1<sup>st</sup>) quarter, and does not find that a violation occurred.

However, this office reminds MCPS that it must ensure that IEP progress reports are written clearly. Additionally, as stated above, the complainant is reminded that if he believes that progress reports contained within the student's education record are inaccurate or misleading, he may request that the school system amend the information.



## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

MSDE requires MCPS to provide documentation by May 30, 2011 that the IEP team has reviewed and revised the IEP, as appropriate, consistent with the evaluative data, including the results of assessments recommended by the team on November 29, 2010, and that the complainant's concerns about the program and placement are addressed. If the IEP requires revision, the team must also determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy needed to redress the delay in completing the reevaluation begun on November 29, 2010. In addition to the above actions, the team must determine whether the violation related to the educational placement decision had a negative impact on the student's ability to benefit from her education program, and if so, the amount and nature of *compensatory services*<sup>3</sup> needed to redress the violation.

MCPS must ensure that the IEP is written clearly and that the complainant is provided with proper written notice of the team's decisions. If the complainant disagrees with the team's decisions, he maintains the right to request mediation or to file a due process complaint to resolve the dispute.

### **School-Based**

MSDE requires MCPS to provide documentation by the end of the 2010-2011 school year of the steps it has taken to determine if the violations identified in the LOF are unique to this case or if they represent a pattern at XXXXXX or XXXXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of OSEP and Memorandum #09-02. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration for future monitoring activities.

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<sup>3</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

XXX  
Ms. Mary Lee Phelps  
March 28, 2011  
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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, and MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Arthur. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. If additional information is provided, it will be reviewed and MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this LOF.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant, the student's mother, and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of FAPE for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH/am

cc : Jerry D. Weast  
Gwendolyn J. Mason  
Alison Steinfels

Amy Shvodian  
XXXXXXXX  
XXXXXXX

Martha J. Arthur